

**OFFICE OF THE CITY ATTORNEY
SOUTH SALT LAKE CITY**

Memorandum

TO: Mayor and City Council
CC: City Recorder
FROM: Paul H. Roberts, Deputy City Attorney
DATE: 6/5/2015

RE: AMENDMENTS TO ALCOHOL ORDINANCE IN LIGHT OF STATE
COMMENTS

We have received an interpretation from the State regarding local authority to enact certain regulations. Here is their response:

The locality can forbid the sale of beer, but cannot regulate the size of pours or amount of consumption allowed. Local authorities can also regulate in areas that are not addressed in the Alcohol Beverage Control Act.

32B-1-204. Powers of local authority.

- (1) If this title expressly addresses an issue related to alcoholic product control in this state, a local authority may not regulate in relation to that issue except when a local authority is expressly granted regulatory authority to regulate the issue by this title.
- (2) If this title does not expressly address an issue related to alcoholic product control, a local authority may regulate that issue if the regulation:
 - a. Is of the sale, offer for sale, furnishing, or consumption of an alcoholic product; and
 - b. Does not conflict with this title.

The Code does regulate in the area of manufacturing, consumption on brewery premises, and what can be consumed and by whom. To do anything other than what is allowed in the statute, the brewer would need an additional license, i.e. tavern, restaurant. Consumption in those licensed premises would need to conform to Chapters 5 and 6. SSLC is free to regulate the hours for sale of beer for off-premise consumption, but may not regulate on-premise consumption outside the parameters of the ABCA.

In light of the State's position, certain provisions in the draft code must be eliminated. Specifically, the sampling provisions must be removed.

Additionally, we are also prohibited from specifying that only beer or heavy beer can be served at a Micro-Brewery, if the State has issued a Club license (with the City's consent). Once we have given consent, the holder of a Club license is entitled to sell beer, heavy beer and liquor.

However, we feel that state code gives sufficient latitude that we can withhold consent for a Club license when an applicant wants to open a micro-brewery, unless the applicant is also operating a brewery on the premises.

Finally, the restrictions on the hours of operation are likely permissible, as the City could impose hours restrictions through its zoning power, and the restrictions proposed are more restrictive

than the hours laid out in state statute. This will be accomplished by the licensee agreeing to the hours restrictions as a condition of our consent, and as a condition of their business license.

At this point, there are several options before the Council:

- (1) Remove the addition of the Microbrewery license from the code, and remove conflicting provisions from the M license section. This would retain the usual A, B, and C limits established in the Code.
- (2) Revise the M and MB codes to permit an MB licensee if they also obtain an On-Premise Beer Retailer license. This would limit the alcohol sales at that location to 3.2% (light) beer only. No heavy beer or liquor could be served there.
- (3) Revise the M & MB codes to permit an MB licensee if they obtain either a Club license or On-Premise Beer Retailer license. This would permit the licensee to serve light beer, heavy beer, and liquor at the establishment.

We will continue to retain the provision that permits an M license holder to apply for a traditional Class B (restaurant) or C (bar) license, if there are such licenses available.

Under both options 2 and 3, the licensee will be required to establish and operate a brewery on-site, as a condition of the City's consent. Abandonment of that operation would result in license and consent revocation.

Accompanying this memo are revisions to the M & MB license sections which reflect these options.

We should discuss these options during our June 10 meeting.

If you have any questions, please feel free to contact me.